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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/615,155      | 07/08/2003  | Joel T. Schmieg      | 5056-0001           | 8248             |

7590

05/05/2004

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EXAMINER

EVANS, ROBIN OCTAVIA

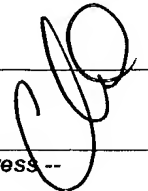
ART UNIT

PAPER NUMBER

3752

DATE MAILED: 05/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                               |                                  |  |
|------------------------------|-------------------------------|----------------------------------|--|
| <b>Office Action Summary</b> | Application No.<br>10/615,155 | Applicant(s)<br>SCHMIEG, JOEL T. |  |
|                              | Examiner<br>Robin O. Evans    | Art Unit<br>3752                 |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 08 July 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>07/08/03</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-9, 15 and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Smith (6,398,136).

Smith shows a fire fighting penetration tool having a weighted head 22 or 104, penetrating body 20, 108, hollow handle 109, apertures 116, grooves 118 and interchangeable penetrating tools as shown in figures 15-18 and figure 23.

### *Claim Rejections - 35 USC § 103*

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 10-12 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith in view of Badberg (2,993,650).

Smith shows all of the claimed limitations but does not show the handle having a shut off valve or a stream adapter. Badberg shows another fire nozzle having a shut off valve 16 located on the handle and a stream adapter 20. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have made Smith's fire fighting tool with a shutoff

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valve on the handle so as to provide a quick and convenient way of shutting off water to the device and to have also supplied a stream adapter so to be able to eject the desired stream or to change the volume of the agent ejected from the nozzle.

As to claim 11 and the limitation that the weighted head is configured to weigh more than the weight of the remainder of said handle, it is deemed that the since the weight of the combination nozzle is used to drive the nozzle through a surface that it would inherently have to weigh more than the remainder of the handle, however if not it would have been obvious to one of ordinary skill in the art to have made the weight so that it weighed more than the handle so as to have sufficient strength to drive the tool when needed.

5. Claims 12-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith over Cunningham (551,527).

Smith shows all of the claim limitations but does not show a stream adapter. Cunningham shows another nozzle having a stream adapter E. It would have been obvious to one of ordinary skill in the art to have made Smith's fire fighting tool with a stream adapter so as to be able to direct the stream so as not to strike the user as suggested by Cunningham.

As to the limitation that the weighted head is configured to weigh more than the weight of the remainder of said handle, it is deemed that the since the weight of the combination nozzle is used to drive the nozzle through a surface that it would inherently have to weigh more than the remainder of the handle, however if not it would have been obvious to one of ordinary skill in the art to have made the weight so that it weighed more than the handle so as to have sufficient strength to drive the tool when needed.

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6. Claims 1-6 and 10-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Badberg in view of Strickland, Jr. (4,170,948).

Badberg shows a fire fighting tool having a hollow handle, penetrating body 14, holes 30, threaded portions as shown in figure 2, shut off valve 16, penetrating surface 32 and stream adapter 20. Badberg does not show a weighted head on the device. Strickland, Jr. shows another penetrating device with a weighted head 30. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided a weighted head on Badberg's device so as to be able to shield the operator from spray and to balance the apparatus so as to prevent excessive shaking from the water passing therethrough during use as suggested by Strickland in column 2, lines 53-60.

As to claim 11 and the limitation that the weighted head is configured to weigh more than the weight of the remainder of said handle, it is deemed that the since the weight of the combination nozzle is used to balance the device during use that it would inherently have to weigh more than the remainder of the handle, however if not it would have been obvious to one of ordinary skill in the art to have made the weight so that it weighed more than the handle so as to have sufficient strength to balance the tool.

7. Claims 7-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Badberg in view of Strickland, Jr. as applied to claims 1-6 and 10-16 above, and further in view of Smith.

The combination Badberg-Strickland tool includes all of the claimed limitations but does not show the penetrating body having a groove. Smith shows another penetrating body having grooves 118. It would have been obvious to put grooves as shown on Smith's tool on the

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penetrating body so as to be able to change the pattern of the spray such that the pattern will cover a larger area.

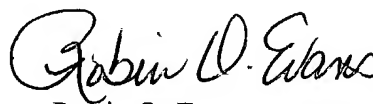
***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Hope, Terayama, McClenahan, and Schmidt et al. show devices in the general state of the art of the invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robin O. Evans whose telephone number is (703) 305-5766. The examiner can normally be reached on Monday-Thursday, 6:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Mar can be reached on (703) 308-2087. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Robin O. Evans  
Primary Examiner  
Art Unit 3752  
5/2/04

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